



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

400 Seventh St., S.W.  
Washington, D.C. 20590

**TAC 98-01**

## **TRANSPORTATION ACQUISITION CIRCULAR**

**DATE ISSUED: January 29, 1998**

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### **TRANSPORTATION ACQUISITION CIRCULAR (TAC) 98-01 SUMMARY OF ITEMS**

TAC 98-01 is issued under the authority of the Transportation Acquisition Regulation (TAR) and, unless otherwise specified, all material contained in this TAC is effective on the date issued. This TAC implements changes to the Federal Acquisition Regulation resulting from Federal Acquisition Circulars 90-43 through 90-46. The TAR is hereby amended as specified below:

#### **PART 1201--FEDERAL ACQUISITION REGULATIONS SYSTEM**

a. Section 1201.105-2(b)(1)(i) is amended to read (FAR) 48 CFR 1.105-2 to align it with FAR.

b. Section 1201.105-3 is amended by adding paragraph (b) to indicate that the TAR and TACs are available on the internet.

*Replacement pages: 1201-1 thru 1201-5.*

#### **PART 1202--DEFINITIONS OF WORDS AND TERMS**

a. Section 1202 is amended by adding Section 1202.70 to state that some documents referenced in the TAR will be available on the internet, and added Appendix A to list the applicable internet addresses.

b. Section 1202.1 is amended to define "Chief Information Officer (CIO)" to mean the Director of the Office of the CIO (S-80) to reflect the creation of this office.

c. Section 1202.1 is amended to remove Transportation Administrative Service Center (TASC) as an entity under the Office of the Secretary of Transportation.

*Replacement pages:* TOC, 1202-1 thru 1202-3.

#### **PART 1203--IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

Section 1203.104-11 is amended by changing the title to read "Criminal and civil penalties, and further administrative remedies," to coincide with the FAR.

*Replacement pages:* TOC, 1203-1 & 1203-2.

#### **PART 1205--PUBLICIZING CONTRACT ACTIONS**

Part 1205 (Coast Guard Supplement) is amended to add coverage on synopsis requirements for personal services contracts awarded in accordance with TAR 1237.104 for medical services. These contracts are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard.

*Replacement pages:* Cover Page (USCG TAR Sup), TOC (USCG TAR Sup), 1205-1 (USCG TAR Sup) (added).

#### **PART 1206--COMPETITION REQUIREMENTS**

Part 1206 (Coast Guard Supplement) is amended to add coverage on competition requirements for personal services contracts awarded in accordance with TAR 1237.104 for medical services. These contracts are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard.

*Replacement pages:* Cover Page (USCG TAR Sup), TOC (USCG TAR Sup), 1206-1 (USCG TAR Sup) (added).

#### **PART 1209--CONTRACTOR QUALIFICATIONS**

Part 1209 is amended to add coverage regarding denial of funds to any institution of higher education that denies or prevents access to the campus or access to directory information pertaining to the students for military recruiting purposes.

*Replacement page:* 1209-1.

**PART 1214--SEALED BIDDING**

Section 1214.303 is amended to delete the coverage in its entirety because the requirement is adequately covered at (FAR) 48 CFR 14.303, Modification or withdrawal of bids.

*Replacement pages:* TOC, 1214-1

**PART 1216--TYPES OF CONTRACTS**

Section 1216.405 is amended to read 1216.406 and renumbered (a), (b), and (c) to read (e)(1)(i), (ii), and (iii) to be consistent with the FAR.

*Replacement pages:* TOC, 1216-1

**PART 1217--SPECIAL CONTRACTING METHODS**

Part 1217 is amended to remove subpart 1217.1 because it is FAA specific and does not require TAR coverage.

*Replacement pages:* TOC, 1217-1 & 1217-2

**PART 1222--APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS.**

Part 1222 is amended to remove subpart 1222.6 in its entirety to coincide with the FAR which eliminated the requirement for the contracting officer's written certification to allow award of a contract to a small business pending SBA's Determination of Eligibility.

*Replacement pages:* TOC, 1222-1

**PART 1224--PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

Section 1224.202 is amended to read "1224.203" to coincide with the FAR.

*Replacement pages:* TOC, 1224-1

**PART 1225--FOREIGN ACQUISITION**

Part 1225 (FAA Supplement) is deleted in its entirety because Section 348 of the FY 1996 Department of Transportation Appropriations Act (Pub. L. 104-50), directed the FAA to develop and implement its own acquisition management system.

*Replacement pages:* None

**PART 1236--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

Section 1236.602-1 is amended to remove all paragraphs except subparagraph (b) since these paragraphs repeat or paraphrase the FAR.

Replacement page: 1236-1

**PART 1237--SERVICE CONTRACTING**

Part 1237 (Coast Guard Supplement) is amended to add coverage on personal services contracts with individuals for health care services.

Replacement pages: TOC (USCG TAR Sup), 1237-1 (USCG TAR Sup) thru 1237-3 (USCG TAR Sup).

**PART 1246--QUALITY ASSURANCE**

Part 1246 is amended to prohibit warranties in time of war or national emergency.

Replacement pages: 1246-1 & 1246-2

**PART 1252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

a. Part 1252.223-70 is amended to delete the certification requirements.

b. Part 1252.228-70 is amended to delete the requirement for the contractor to certify the contract price does not include certain costs. The contractor agrees by virtue of the clause, these costs are not included.

c. Part 1252.228-72 is amended to delete the requirement to provide a Certificate of Insurance. Evidence of insurance shall be provided to the contracting officer.

d. Part 1252 (FAA Supplement) is deleted in its entirety because Section 348 of the FY 1996 Department of Transportation Appropriations Act (Pub. L. 104-50), directed the FAA to develop and implement its own acquisition management system.

e. TAR Matrix. Part 1252.225-90 is deleted from the matrix. This clause was FAA unique.

Replacement pages: 1252-15 thru 1252-20, TAR Matrix (pages 3 and 4).

## TAC 98-01 FILING INSTRUCTIONS

### Remove

1201-1 thru 1201-5

TOC, Part 1202  
1202-1 & 1202-2

TOC, Part 1203  
1203-1 & 1203-2

NONE

NONE

TOC, Part 1209  
1209-1

TOC, Part 1214  
1214-1

TOC, Part 1216  
1216-1

TOC, Part 1217  
1217-1 & 1217-2

TOC, Part 1222  
1222-1 & 1222-2

TOC, Part 1224  
1224-1

Cover Page (FAA TAR Sup)  
Part 1225

TOC, Part 1225 (FAA TAR Sup)  
1225-1 (FAA TAR Sup) thru  
1225-3 (FAA TAR Sup)

1236-1 & 1236-2

TOC, Part 1237 (USCG TAR Sup)  
1237-1 (USCG TAR Sup)

### Insert

1201-1 thru 1201-5

TOC, Part 1202  
1202-1 thru 1202-3

TOC, Part 1203  
1203-1 & 1203-2

Cover Page (USCG TAR Sup)  
Part 1205  
TOC, Part 1205 (USCG TAR Sup)  
1205-1 (USCG TAR Sup)

Cover Page (USCG TAR Sup)  
Part 1206  
TOC, Part 1206 (USCG TAR Sup)  
1206-1 (USCG TAR Sup)

TOC, Part 1209  
1209-1

TOC, Part 1214  
1214-1

TOC, Part 1216  
1216-1

TOC, Part 1217  
1217-1 & 1217-2

TOC, Part 1222  
1222-1

TOC, Part 1224  
1224-1

NONE

1236-1

TOC, Part 1237 (USCG TAR Sup)  
1237-1 (USCG TAR Sup) thru  
1237-3 (USCG TAR Sup)

## TAC 98-01 FILING INSTRUCTIONS

### Remove

1246-1 & 1246-2

1252-15 thru 1252-20  
Part 1252 (FAA TAR SUP) Cover  
Sheet, TOC, 1252 (FAA TAR  
SUP), 1252-1 (FAA TAR SUP) &  
1252-2 (FAA TAR SUP)

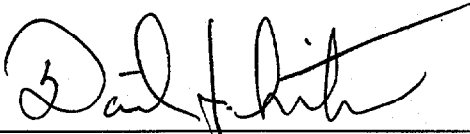
TAR MATRIX (pages 3 & 4)

### Insert

1246-1 & 1246-2

1252-15 thru 1252-20

TAR MATRIX (pages 3 & 4)



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David J. Litman  
Senior Procurement Executive

## PART 1201

### FEDERAL ACQUISITION REGULATIONS SYSTEM

#### SUBPART 1201.1 - PURPOSE, AUTHORITY, ISSUANCE

##### 1201.101 Purpose.

The Department of Transportation Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

##### 1201.103 Authority.

The Secretary of Transportation has delegated the authority to issue Department of Transportation (DOT) procurement regulations (i.e., the TAR) to the Assistant Secretary for Administration who has redelegated this authority to the Senior Procurement Executive (SPE).

##### 1201.104 Applicability.

(a) Statute, the FAR, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the FAR or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM): (1) statute; (2) FAR or other applicable regulation; (3) TAR; (4) DOT Orders; and (5) TAM.

(c) The Maritime Administration may depart from the requirements of the FAR and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. § 474(16), but shall adhere to those regulations to the maximum extent practicable.

TAR

Exceptions from the requirements of the FAR and/or TAR shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

##### 1201.105 Issuance.

##### 1201.105-1 Publication and code arrangement.

(a) The TAR is published in: (1) the Federal Register; (2) cumulated form in the CFR; and (3) separate loose-leaf form.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

##### 1201.105-2 Arrangement of regulations.

(a) *General.* The TAR, which encompasses both Departmentwide and operating administration-unique guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance which is unique to an operating administration contains the operating administration acronym directly preceding the cite/page number. The following acronyms apply when regulatory coverage is written:

FAA - Federal Aviation Administration  
FHWA - Federal Highway Administration  
FRA - Federal Railroad Administration  
FTA - Federal Transit Administration  
MARAD - Maritime Administration  
NHTSA - National Highway Traffic  
Safety Administration  
OST - Office of the Secretary  
RSPA - Research and Special Programs  
Administration  
SLSDC - Saint Lawrence Seaway  
Development Corporation  
TASC - Transportation Administrative  
Service Center  
USCG - United States Coast Guard

(TAC 98-01) 1201-1

(b) *Numbering.*(1) *Departmentwide guidance.*

(i) The numbering illustrations at (FAR) 48 CFR 1.105-2 apply to the TAR.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix "12" followed by the complete FAR cite which may be down to the subparagraph level (e.g., (TAR) 48 CFR 1201.201-1).

(iii) Coverage in TAR Chapter 12 that supplements the FAR will use part, subpart, section and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (TAR) 48 CFR 1201.301-70).

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a "70" or higher number, that implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may be down to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (TAR) 48 CFR 1201.201-1 contains subparagraphs (b) and (d) because only these subparagraphs, correlating to FAR, are being supplemented by (TAR) 48 CFR chapter 12).

(2) *Operating administration-unique guidance.* Supplementary material for which there is no counterpart in the FAR or TAR shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and up (e.g., the U.S. Coast Guard's acronym is "USCG"; an USCG-unique clause pertaining to

"Inspection and/or Acceptance" would be designated "USCG 1252.246-90").

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross reference to the FAR in (TAR) 48 CFR chapter 12 will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by "TAM" followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be by the numbered cite only.

**1201.105-3 Copies.**

(a) Copies of the TAR in Federal Register, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the internet. See Part 1202, Appendix A, for the internet address.

**1201.106 OMB Approval Under the Paperwork Reduction Act.**

(a) *Data collection by regulation.* The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB). The OMB Control Number for the collection of the information under 48 CFR chapter 12 is 2105-0517 which expires on May 30, 2000.

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR 1320),



OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations containing this type of information collection may be released prior to OMB approval provided: (1) a statement is included in the solicitation to the effect that contract award will not be made until OMB approval of the information collection requirements of the proposed contract has been obtained; and (2) enough time is permitted to allow receipt of OMB approval prior to contract award.

#### SUBPART 1201.2 - ADMINISTRATION

##### 1201.201 Maintenance of the FAR.

###### 1201.201-1 The two councils.

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council.

(d) The Office of Acquisition and Grant Management is responsible for Departmentwide review and coordination of cases containing proposed FAR revisions, as necessary, approval of DOT-generated cases, and submission of cases to the Civilian Agency Acquisition Council.

#### SUBPART 1201.3 - AGENCY ACQUISITION REGULATIONS

##### 1201.301 Policy.

###### (a)(1) Acquisition regulations.

(i) Departmentwide acquisition regulations. The authority of the agency head under (FAR) 48 CFR 1.301(a)(1) is delegated to the Assistant Secretary for Administration.

(ii) Operating administration acquisition regulations. Operating administration acquisition regulations, and any changes thereto, shall be reviewed and approved by the SPE for insertion into the TAR as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the Federal Register in accordance with (FAR) 48 CFR 1.501. Operating administration regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless specified otherwise.

##### 1201.301-70 Amendment of (TAR) 48 CFR chapter 12.

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. These changes are to be submitted in the following format to the Office of Acquisition and Grant Management, 400 7th Street, S.W., Washington, DC 20590:

(1) PROBLEM: Succinctly state the problems created by current TAR language and describe the factual and/or legal reasons necessitating regulatory change.

(2) RECOMMENDATION: Identify the recommended change by using the current language and lining through the words being deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) DISCUSSION: Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide

documents such as statutes, legal decisions, regulations, reports, etc.

(4) POINT OF CONTACT: Provide a point of contact for answering questions regarding the recommendation.

(b) The TAR will be maintained by the SPE through the TAR/TAM change process (i.e., input from various DOT elements including representatives from DOT operating administrations specifically designated to formulate Departmental acquisition policies and procedures).

(1) *Transportation Acquisition Circular (TAC)*. TACs containing loose-leaf replacement pages which revise parts, subparts, or paragraphs (also see (TAR) 48 CFR 1201.301-72 below) will be used to amend (TAR) 48 CFR chapter 12. Each replacement page will bear at the top the TAC number and date. A vertical bar next to the coverage indicates that a change has been made.

(2) *TAR Notice (TN)*.

(i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which is expected to be effective for a period of 1 year or less.

(ii) Each TN will terminate upon its specified expiration date.

## **1201.301-71 Effective date.**

Unless otherwise stated, the following applies--

(a) Statements in TACs or TNs to the effect that the material therein is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations are already in process or negotiations complete when the TAC or TN is received, the new information (e.g., forms and clauses) need not be included if it is determined by the chief of the contracting office that its inclusion would not be in the best interest of the Government.

## **1201.301-72 TAC or TN numbering.**

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year (e.g., TNs 94-01 and 94-02 indicate the first two TNs issued in fiscal year 1994).

## **1201.304 Agency control and compliance procedures.**

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal TAR change process that involves input from many DOT elements including operating administration representatives on the Procurement Management Council. The operating administration member shall represent

their operating administration's viewpoint along with Departmentwide considerations in reaching a decision on TAR changes.

(b) Operating administration-unique regulations will not be processed through the TAR/TAM change process, but shall be reviewed by operating administration legal counsel and submitted to M-60 for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

#### **SUBPART 1201.470--DEVIATIONS FROM THE FAR AND (TAR) 48 CFR**

##### **1201.403 Individual deviations.**

The authority of the agency head under (FAR) 48 CFR 1.403 and (TAR) 48 CFR chapter 12 is delegated to the Head of the Contracting Activity or designee no lower than Senior Executive Service (SES)/Flag Officer level. However, see TAM 1201.403.

##### **1201.404 Class deviations.**

Class deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Senior Procurement Executive unless (FAR) 48 CFR 1.405(e) is applicable.

#### **SUBPART 1201.6--CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES**

##### **1201.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* It is the policy of DOT that all procurements are to be made only by Government officials having authority to make such acquisitions. Procurements made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Consideration will be given to initiating disciplinary action against an employee who makes an unauthorized commitment.

##### **1201.603-1 General.**

Each DOT operating administration is responsible for appointing its contracting officers.



PART 1202

DEFINITIONS OF WORDS AND TERMS

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SUBPART 1202.70--INTERNET LINKS

1202.7000 General.

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Documents.



## PART 1202

## DEFINITIONS OF WORDS AND TERMS

## SUBPART 1202.1 - DEFINITIONS

## 1202.1 Definitions.

(a) "Agency," "Federal agency," or "Executive agency" means the Department of Transportation.

(b) Chief Information Officer (CIO) means the Director of the Office of the CIO (S-80).

(c) "Chief of the contracting office (COCO)" means the individual(s) responsible for managing the contracting office(s) within an operating administration.

(d) "Contracting activity" includes all the contracting offices within an operating administration and is the same as the term "procuring activity."

(e) "Contracting officer" means an individual authorized by virtue of his/her position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Transportation Acquisition Regulation.

(f) "Department of Transportation (DOT)" means all of the operating administrations included within the Department of Transportation.

(g) "Head of the agency" or "agency head" means the Deputy Secretary except for acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

(h) Head of the contracting activity (HCA) means the individual responsible for managing the contracting offices within an operating administration who is a member of the Senior Executive Service or a flag officer and is the same as the term "head of the procuring activity."

(i) "Head of the operating administration (HOA)" means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Director, Transportation Administrative Service Center (TASC) is the HOA for TASC.)

(j) "Operating administration" (OA) means the following components of DOT:

- (1) Federal Aviation Administration (FAA). (FAA is exempt from the TAR and TAM in accordance with the "Department of Transportation and Related Appropriations Act for FY 1996");
- (2) Federal Highway Administration (FHWA);
- (3) Federal Railroad Administration (FRA);
- (4) Federal Transit Administration (FTA);
- (5) Maritime Administration (MARAD);
- (6) National Highway Traffic Safety Administration (NHTSA);
- (7) Transportation Acquisition Service Center (TASC);

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(8) Research and Special  
Programs Administration  
(RSPA);

(9) Saint Lawrence Seaway  
Development Corporation  
(SLSDC); and

(10) United States Coast Guard  
(USCG).

I (k) "*Senior Procurement Executive*"  
(SPE) means the Director of the  
Office of Acquisition and Grant  
Management (M-60).

### SUBPART 1202.70--INTERNET LINKS

#### 1202.7000 General.

Throughout the (TAR) 48 CFR  
chapter 12, referenced documents  
which can be found on the internet  
will cite the applicable internet  
address. These addresses are located  
in Appendix A of this part.



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## APPENDIX A

### List of Internet Addresses for TAR Documents

<u>TAR Part</u>	<u>Document Name</u>	<u>Internet Address</u>
1201	TAR	<a href="http://www.dot.gov/ost/m60/tamtar/part1201.htm">http://www.dot.gov/ost/m60/tamtar/part1201.htm</a>
	TAC	<a href="http://www.dot.gov/ost/m60/tamtar/part1201.htm">http://www.dot.gov/ost/m60/tamtar/part1201.htm</a>
1205	DOT Procurement Forecast	<a href="http://osdbuweb.dot.gov/consolic.htm">http://osdbuweb.dot.gov/consolic.htm</a>
1234	Major Acquisition Policies and Procedures	<a href="http://www.dot.gov/ost/m60/tamtar/chap1234.htm">http://www.dot.gov/ost/m60/tamtar/chap1234.htm</a>



# TAC 98-01

## PART 1203

### IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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- 1203.203 Reporting suspected  
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- 1203.204 Treatment of violations.

#### SUBPART 1203.3--REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

- 1203.301 General.

#### SUBPART 1203.4--CONTINGENT FEES

- 1203.405 Misrepresentations or  
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- 1203.806 Processing suspected  
violations.



## PART 1203

IMPROPER BUSINESS PRACTICES AND  
PERSONAL CONFLICTS OF INTEREST

## SUBPART 1203.1 - SAFEGUARDS

## 1203.101-3 Agency regulations.

(b) 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch, supersedes the DOT regulation at 49 CFR Part 99.

## 1203.104-11 Criminal and civil penalties, and further administrative remedies.

(a) The COCO is the reviewing official for processing violations.

(1) When the contracting officer receives information of a violation or possible violation, and concludes that the reported violation or possible violation of the statutory prohibitions has no impact on the pending procurement, the contracting officer shall forward the information required by (FAR) 48 CFR 3.104-11(a)(1) to the COCO for concurrence with the contracting officer's conclusion. If the COCO concurs with the conclusion, the contracting officer shall proceed with the award, and the COCO shall submit the information and conclusion to the HCA.

(2) When the COCO does not concur with the conclusion of the contracting officer, the COCO shall advise the contracting officer to withhold award, and the COCO shall promptly forward the information and documentation to the HCA.

(3) When the contracting officer determines that the information concerning a violation or possible violation will impact the pending procurement, the contracting

officer shall promptly forward the information and documentation to the HCA.

(b) The HCA shall review the information transmitted in accordance with subparagraph (a)(1) through (a)(3) of this section and take appropriate action, as required by (FAR) 48 CFR 3.104-11(b).

(c) If the HCA believes that a violation has occurred and the information should be disclosed to a criminal investigative agency (e.g. the Department of Justice) or that there may be a possible violation, and an investigation should be conducted, the HCA shall obtain guidance from legal counsel and the OIG prior to taking any action.

If the HCA pursuant to (FAR) 48 CFR 3.104-11(f), determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, a memorandum of the facts and circumstances shall be signed by the HCA and placed in the contract file.

SUBPART 1203.2 - CONTRACTOR GRATUITIES  
TO GOVERNMENT PERSONNEL

## 1203.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (OIG) (J-1), 400 7th Street, S.W., Washington, DC, 20590, with a copy to General Counsel (C-1) and the OA's Chief Counsel.

#### **1203.204 Treatment of violations.**

(a) The authority of the agency head established in (FAR) 48 CFR 3.204(a), to determine whether a gratuities clause violation has occurred, has been delegated to the HCA. If the decision maker pursuant to this delegation has been personally and substantially involved in the procurement, the advice of Government legal counsel should be sought to determine whether an alternate decision maker should be designated.

(b) The COCO shall ensure that the hearing procedures required by FAR 3.204 are afforded to the contractor. Government legal counsel should be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the alleged gratuities violation occurs during the "conduct of an agency procurement" as defined by (FAR) 48 CFR 3.104-4(c)(1), the

COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

#### **SUBPART 1203.3--REPORTS OF SUSPECTED ANTITRUST VIOLATIONS**

##### **1203.301 General.**

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except suspected antitrust violations shall be reported through legal counsel in accordance with (FAR) 48 CFR 3.303.

#### **SUBPART 1203.4--CONTINGENT FEES**

##### **1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees.

#### **SUBPART 1203.5--OTHER IMPROPER BUSINESS PRACTICES**

##### **1203.502 Subcontractor kickbacks.**

##### **1203.502-2 General.**

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

#### **SUBPART 1203.8--LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS**

##### **1203.806 Processing suspected violations.**

Contracting officers shall report.

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PART 1205

PUBLICIZING CONTRACT ACTIONS





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PART 1205

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1205.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR Part 5.

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PART 1206

COMPETITION REQUIREMENTS

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains. The number of transformed cells was determined by the number of colonies obtained on the selective medium. The results are the mean of three independent experiments. Error bars represent the standard deviation.

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1206.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR Part 6.

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## PART 1209

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### PART 1209

#### CONTRACTOR QUALIFICATIONS

#### SUBPART 1209.4--DEBARMENT, SUSPENSION, AND INELIGIBILITY

##### 1209.408-70 Denial of funds.

(a) In accordance with Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) and Section 206 of the Coast Guard Authorization Act of 1996 (Pub. L. 104-324), no funds available under appropriations acts for any fiscal year for DOT may (with respect to recruiting) be provided by contract to any institution of higher education that has a policy or practice, regardless of when implemented, that either prohibits or in effect prevents the Secretary of Defense from obtaining for military recruiting purposes:

(1) Entry to campuses or access to students on campuses; or

(2) Access to directory information on students.

(b) Directory information means the student's name, address, telephone listing, date and place of birth, level of education, academic major, degrees received, and the most recent educational institution in which the student was enrolled.

(c) Students referred to in paragraph (a)(1) of this section are individuals who are 17 years of age or older and are enrolled at a covered school.

(d) Covered school means an institution of higher education, or a subelement of an institution of higher education.

#### SUBPART 1209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

##### 1209.507 Solicitation provisions.

The contracting officer may insert the provision at (TAR) 48 CFR 1252.209-70, "Disclosure of Conflicts of Interest" in all solicitations for negotiated acquisitions, when simplified acquisitions procedures in (FAR) 48 CFR Part 13, are not used and when the contracting officer believes the conditions enumerated in (FAR) 48 CFR 9.507-2 warrant inclusion.

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### PART 1214

#### SEALED BIDDING

#### SUBPART 1214.2--SOLICITATION OF BIDS

##### 1214.205 Solicitation mailing lists.

##### 1214.205-1 Establishment of lists.

(b) The issuance of a solicitation within a reasonable time (i.e., normally 45 days) after receipt of a SF 129, Solicitation Mailing List Application, constitutes the notification required under (FAR) 48 CFR 14.205-1. If a solicitation is not anticipated for release within a reasonable time after receipt of the SF 129 or if an applicant does not meet the criteria for placement on the list, the contracting officer shall provide a written notification of acceptance or non-acceptance to the applicant within 45 days of application receipt.

(d) Requests for supplemental information shall normally be attached to the SF 129 and forwarded to potential suppliers for completion.

#### SUBPART 1214.3--SUBMISSION OF BIDS

##### 1214.302 Bid submission.

(b) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for receiving and safeguarding these incoming bids.

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## PART 1216

## TYPES OF CONTRACTS

## SUBPART 1216.2--FIXED-PRICE CONTRACTS

1216.203 Fixed-price contracts with economic price adjustment.

1216.203-4 Contract clauses.

1216.203-470 Solicitation provision.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216-70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

## SUBPART 1216.4--INCENTIVE CONTRACTS

I 1216.406 Contract clauses.

I (e)(1)(i) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

I (ii) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

I (iii) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

## SUBPART 1216.5--INDEFINITE-DELIVERY CONTRACTS

1216.505 Ordering.

(b)(4) Unless otherwise provided in OA procedures, the OA Competition Advocate is designated as the OA Task and Delivery Order Ombudsman.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the OA, are to be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution.

## SUBPART 1216.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

1216.603 Letter contracts.

1216.603-4 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-74, Settlement of Letter Contract, in all definitized letter contracts.

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## PART 1217

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## PART 1217

## SPECIAL CONTRACTING METHODS

SUBPART 1217.70--FIXED PRICE  
CONTRACTS FOR VESSEL REPAIR,  
ALTERATION OR CONVERSION

## 1217.7000 Clauses.

The following clauses are to be used in specific solicitations and contracts:

(a) The clauses set forth in (TAR) 48 CFR 1252.217-71 through (TAR) 48 CFR 1252.217-74 and (TAR) 48 CFR 1252.217-76 through (TAR) 48 CFR 1252.217-80 shall be included and clause (TAR) 48 CFR 1252.217-75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(b) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217-71 through (TAR) 48 CFR 1252.217-74 and (TAR) 48 CFR 1252.217-76 through (TAR) 48 CFR 1252.217-80 should be included and (TAR) 48 CFR 1252.217-75 may be included in negotiated solicitations and contracts to be performed outside the United States.

(c) The clause at (TAR) 48 CFR 1252.217-81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause

for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217-81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (TAR) 48 CFR 1252.217-81, Guarantee.

SUBPART 1217.71--ENERGY SAVINGS  
PERFORMANCE CONTRACTS

## 1217.7100 Policy.

Federal agencies may enter into multi-year contracts for a period of up to 25 years under Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287, as amended. Energy savings performance arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned

buildings and facilities to improve energy efficiency, at no cost to the Federal Government in exchange for a share of energy savings directly resulting from the changes. Proposed actions under this section shall be coordinated with M-60.

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## PART 1222

APPLICATION OF LABOR LAWS TO  
GOVERNMENT ACQUISITIONS

## SUBPART 1222.1--BASIC LABOR POLICIES

## 1222.101 Labor relations.

1222.101-70 Admittance of union  
representatives to DOT installations.

(a) It is the policy of DOT to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator (i.e., Director, Office of Economics (P-35), Office of the Secretary) or OA labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

## 1222.101-71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (TAR) 48 CFR 1252.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (TAR) 48 CFR 1252.222-71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

SUBPART 1222.4--LABOR STANDARDS FOR  
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suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(1) *Forwarding wage underpayments to the Comptroller General.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) must receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.



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## PART 1224

## PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

## SUBPART 1224.1--PROTECTION OF INDIVIDUAL PRIVACY

## 1224.102-70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies and which shall not be released irrespective of whether the Government or a contractor acting on behalf of the Government is maintaining the records include the following:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applicants for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Illustrations of systems of records to which the Privacy Act does not apply include:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) The records generated, when contracting with an educational institution, on contract students pursuant to their attendance (e.g., admission forms, grade reports), provided that they are similar to

those maintained under contracts with educational institutions to provide training, generated on students working under the contract relative to their attendance (e.g., admission forms, grade reports), similar to those maintained on other students and are commingled with records of other students.

## 1224.103 Procedures.

DOT's rules and regulations implementing the Privacy Act of 1974 are located at (FAR) 49 CFR Part 10. I

## SUBPART 1224.2--FREEDOM OF INFORMATION ACT

## 1224.203 Policy. I

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in (FAR) 49 CFR Part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.



PART 1236

CONSTRUCTION AND ARCHITECT-ENGINEER  
CONTRACTS

SUBPART 1236.3--SPECIAL ASPECTS OF  
SEALED BIDDING IN CONSTRUCTION  
CONTRACTING

1236.305 Preconstruction conference.

When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

SUBPART 1236.5--CONTRACT CLAUSES

1236.570 Special precautions for work  
at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236-70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

SUBPART 1236.6--ARCHITECT-ENGINEER  
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1236.602 Selection of firms for  
architect-engineer contracts.

1236.602-1 Selection criteria.

(b) If a design competition is to be used, written approval by the COCO shall be obtained prior to soliciting proposals.

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## PART 1237

## SERVICE CONTRACTING

SUBPART 1237.1--SERVICE CONTRACTS--  
GENERAL1237.104 Personal services contracts.  
(USCG)1237.104-90 Delegation of authority.  
(USCG)

(a) Section 733(a) of Pub. L. 104-106, the DOD Authorization Act of 1996, amended Title 10 of the United States Code to include a new provision which authorizes the Secretary, with respect to the Coast Guard, to enter into personal services contracts at medical treatment facilities (10 U.S.C. 1091).

(b) The authority of the Secretary of Transportation under Pub. L. 104-106 to award personal services contracts for medical services at facilities for the Coast Guard is delegated to the HCA with the authority to redelegate to contracting officers under procedures established by the HCA, who will address applicable statutory limitations under Section 1091A of Title 10 U.S.C.

## 1237.104-91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG)

(a) Personal services contracts for health care services are authorized by 10 U.S.C. 1091 for the Coast Guard. Sources for contracts for health care services under the authority of 10 U.S.C. 1091 shall be selected through procedures established in this section. These procedures do not apply to contracts awarded to business entities other

than individuals. Selections made using the procedures in this section are exempt by statute from (TAR) 48 CFR 1206 competition requirements (see (TAR) 48 CFR 1206.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication which serves the area of the facility. Acquisitions for health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR Part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking in accordance with the evaluation procedures. Individuals must be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) enter into negotiations with the highest ranked offeror. If

a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

#### SUBPART 1237.90--MORTUARY SERVICES

##### 1237.9000 Solicitation provisions and contract clauses. (USCG)

(a) The contracting officer shall insert the following clauses in solicitations and contracts for mortuary services. However, USCG clauses (TAR) 48 CFR 1252.237-91 and 1252.237-97 shall not be inserted in solicitations and contracts that include port of entry requirements:

(1) (TAR) 48 CFR 1252.237-90, Requirements;

(2) (TAR) 48 CFR 1252.237-91, Area of Performance;

(3) (TAR) 48 CFR 1252.237-92, Performance and Delivery;

(4) (TAR) 48 CFR 1252.237-93, Subcontracting;

(5) (TAR) 48 CFR 1252.237-94, Termination for Default;

(6) (TAR) 48 CFR 1252.237-95, Group Interment;

(7) (TAR) 48 CFR 1252.237-96, Permits;

(8) (TAR) 48 CFR 1252.237-97, Facility Requirements; and

(9) (TAR) 48 CFR 1252.237-98, Preparation History.



(b) The contracting officer shall insert USCG provision (TAR) 48 CFR 1252.237-99, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with Alternate I in negotiated solicitations for mortuary services.

(c) The contracting officer shall insert (FAR) 48 CFR 52.245-4, Government-Furnished Property (Short Form) in solicitations and contracts that include port of entry requirements.



## PART 1246

### QUALITY ASSURANCE

#### SUBPART 1246.7--WARRANTIES

##### 1246.701 Definitions.

##### 1246.701-70 Additional definitions.

*At no additional cost to the Government*, means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

*Major system* means a system or major subsystem used directly by DOT to carry out its mission(s), as defined by TAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (TAR) 48 CFR 1246.701-90). The term does not include: (a) related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or (b) commercial items sold in substantial quantities to the

general public as described in (FAR) 48 CFR 15.804-1.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

##### 1246.703 Criteria for use of warranties.

(a) *Major Systems*. The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (TAR) 48 CFR 1246.792). Other OAs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

##### (b) Other Systems.

(1) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by (FAR) 48 CFR 46.703.

(2) Contracting officers should negotiate a warranty that meets or exceeds the requirements of (TAR) 48 CFR 1246.706 when it is advantageous.

##### 1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The USCG is the only DOT OA which is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (TAR) 48 CFR 1246.790-3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

#### 1246.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

**1252.219-70 Small Business and Small Disadvantaged Business subcontracting reporting.**

As prescribed in (TAR) 48 CFR 1219.708-70, insert the following clause:

**SMALL BUSINESS AND SMALL  
DISADVANTAGED BUSINESS  
SUBCONTRACTING REPORTING  
(JUN 1997)**

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF-295)) to the Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (S-42), 400 7th St., SW, Washington, DC, 20590.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

(End of clause)

**1252.222-70 Strikes or picketing affecting timely completion of the contract work.**

As prescribed in (TAR) 48 CFR 1222.101-71(a), insert the following clause:

**STRIKES OR PICKETING AFFECTING  
TIMELY COMPLETION OF THE  
CONTRACT WORK  
(OCT 1994)**

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

**1252.222-71 Strikes or picketing affecting access to a DOT facility.**

As prescribed in (TAR) 48 CFR 1222.101-71(b), insert the following clause:

**STRIKES OR PICKETING AFFECTING  
ACCESS TO A DOT FACILITY  
(OCT 1994)**

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a

DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

**1252.223-70 Removal or disposal of hazardous substances - applicable licenses and permits**

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

**REMOVAL OR DISPOSAL OF  
HAZARDOUS SUBSTANCES -  
APPLICABLE LICENSES AND PERMITS  
(DEC 1997)**

The Contractor must have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within \_\_\_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

**1252.223-71 Accident and fire reporting.**

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

**ACCIDENT AND FIRE REPORTING  
(OCT 1994)**

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of \$1,000 or more to Federal property, either real or personal;

(3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury;  
and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

#### **1252.223-72 Protection of human subjects.**

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

#### **PROTECTION OF HUMAN SUBJECTS (OCT 1994)**

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) principles and procedures (in accordance with NHTSA Order 700-1, 700-3, and 700-4) for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. A copy of the applicable NHTSA orders shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

(1) The rights and welfare of subjects are adequately protected;

(2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any

review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(Note: If the Contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700-1, 700-3, and 700-4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

#### 1252.228-70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306-70(a) and (b), insert the following clause:

#### LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DEC 1997)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by

contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-71, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) credited to the Government in determining the amount of the Government's liability; or

(2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)



**1252.228-71 Fair market value of aircraft.**

As prescribed in (TAR) 48 CFR 1228.306-70(a) and (c), insert the following clause:

**FAIR MARKET VALUE OF AIRCRAFT  
(OCT 1994)**

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) \$ \_\_\_\_\_; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

**1252.228-72 Risk and indemnities.**

As prescribed in (TAR) 48 CFR 1228.306-70(a) and (d), insert the following clause:

**I RISK AND INDEMNITIES (DEC 1997)**

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or

death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

**1252.231-70 Date of incurrence of costs.**

As prescribed in (TAR) 48 CFR 1231.205-32, insert the following clause:

**DATE OF INCURRENCE OF COSTS  
(OCT 1994)**

The Contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

**1252.236-70 Special precautions for work at operating airports.**

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

**SPECIAL PRECAUTIONS FOR WORK AT  
OPERATING AIRPORTS (OCT 1994)**

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations

will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment

shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

#### **1252.237-70 Qualifications of employees.**

As prescribed in (TAR) 48 CFR 1237.110, insert the following clause:

#### **QUALIFICATIONS OF EMPLOYEES (OCT 1994)**

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public

# TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP
1252.228-72 Risk and Indemnities	1228.306-70 (a) and (d)	C	YES	I					A	A			A							A	
1252.231-70 Date of Incurrence of Costs	1231.205-32	C	NO	I		A		A		A		A									
1252.236-70 Special Precautions for Work at Operating Airports	1236.570.	C	YES	I							A	A	A		A	A	A			A	A
1252.237-70 Qualifications of Employees	1237.110.	C	YES	I					A	A				A							A
1252.237-71 Certification of Data	1237.7003	P	NO	K					A	A				A				A		A	
1252.237-72 Prohibition on Advertising	1237.7003	C	NO	I					A	A				A				A		A	
1252.242-70 Dissemination of Information - Educational Institutions	1242.203-70(a)	C	YES	I			A	A													
1252.242-71 Contractor Testimony	1242.203-70(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-72 Dissemination of Contract Information	1242.203-70(c)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242-73 Contracting Officers Technical Representative	1242.7000.	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A		
1252.245-70 Government Property Reports	1245.505-70	C	YES	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.247-70 Acceptable Service at Reduced Rates	1247.104-370	C	YES	I		A				A											
1252.247-71 F.O.B. Origin Information	1247.305-70	P	YES	L	A								A					A		A	
1252.247-72 F.O.B. Origin Only	1247.305-70	P	YES	L	A								A					A		A	
1252.247-73 F.O.B. Destination Only	1247.305-70	P	YES	L	A								A					A		A	
1252.247-74 Shipments to Ports and Air Terminals	1247.305-70	P	YES	L	A								A					A		A	
1252.247-75 F.O.B. Designated Air Carrier's Terminal, Port of Exportation	1247.305-70	P	YES	L	A								A					A		A	
1252.247-76 Nomination of Additional Ports	1247.305-70	P	YES	L	A								A					A		A	
1252.247-77 Supply Movement in the Defense Transportation System	1247.305-71	C	YES	F	A								A					A		A	

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
USCG 1252.210-90 Bar Coding Requirement	USCG 1210.011-90 & 1213.507-90	C	YES	I	A	A													A		A	
USCG 1252.213-90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement	USCG 1213.107-90	P	NO	M																	A	
USCG 1252.220-90 Local Hire	USCG 1220.9001	C	YES	I					A	A	A	A			A		A		A			A
USCG 1252.228-90 Notification of Miller Act Payment Bond Protection	USCG 1228.9000.	C	NO	I								A	A									
USCG 1252.237-90 Requirements	USCG 1237.9000.	C	NO	I					A	A									A			
USCG 1252.237-91 Area of Performance	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-92 Performance and Delivery	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-93 Subcontracting	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-94 Termination for Default	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-95 Group Interment	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-96 Permits	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-97 Facility Requirements	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-98 Preparation History	USCG 1237.9000.	C	YES	I					A	A									A		A	
USCG 1252.237-99 Award to Single Offeror	USCG 1237.9000.	P	YES	I					A	A									A		A	

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